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6 Attorneys for Defendant
DAVE & BUSTER'S, INC.
7

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 CHERISH NUNNALLY, individually
11 as an aggrieved employee and private
attorney general, and on behalf of
12 others similarly situated,

13 Plaintiff,

14 v.

15 DAVE & BUSTER'S, INC., a Missouri
corporation; and DOES 1 through 10,
16 inclusive,

17 Defendants.
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Case No. 8:16-cv-00855

**NOTICE TO FEDERAL COURT OF
REMOVAL OF CIVIL ACTION
FROM STATE COURT PURSUANT
TO 28 U.S.C. SECTIONS 1331, 1441,
AND 1446**

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT, PLAINTIFF CHERISH
2 NUNNALLY, AND PLAINTIFF'S COUNSEL OF RECORD:

3 PLEASE TAKE NOTICE that pursuant to 28 U.S.C. sections 1331, 1441, and
4 1446, Defendant Dave & Busters, Inc. ("Defendant") hereby removes the above-
5 entitled action, Case No. 30-2014-00696637-CU-WT-CXC, from the Superior Court
6 of the State of California, County of Orange, to the United States District Court for the
7 Central District of California, Southern Division. This Notice is based upon the
8 original jurisdiction of the federal district court over the parties pursuant to 28 U.S.C.
9 section 1331 ("Section 1331") and the Fair Labor Standards Act (29 U.S.C. section
10 201, *et seq.*, the "FLSA").

11 Defendant makes the following allegations in support of its Notice of Removal:

12 **JURISDICTION [LOCAL RULE 8-1]**

13 1. This Court has original jurisdiction under Section 1331, and this case
14 may be removed pursuant to the provisions of 28 U.S.C. section 1441(b), in that it is a
15 civil action that presents a federal question. As set forth below, this case meets all of
16 Section 1331's requirements for removal and is timely and properly removed by the
17 filing of this Notice.

18 2. Venue is proper in this Court pursuant to 28 U.S.C. sections 84(c)(3),
19 1391, and 1446.

20 **PROCESS, PLEADINGS, AND ORDERS**

21 3. On August 2, 2013, Plaintiff Cherish Nunnally ("Plaintiff") filed a
22 putative class action Complaint in the Superior Court for the County of San Francisco
23 against her former employer, Defendant, on behalf of herself and "[a]ll individuals
24 who worked for Defendants in a California 'Dave & Buster's' restaurant as a server at
25 any time during the period from four years prior to the filing of this Complaint until
26 the date of certification." Attached hereto as Exhibit "A" is a true and correct copy of
27 Plaintiff's Complaint, *see* ¶ 19. Plaintiff also sought to represent those "individuals
28 who worked for Defendants in a California 'Dave & Buster's' restaurant as a server at

any time during the period from one year prior to the filing of this Complaint until the date of certification.” (Exhibit “A,” ¶ 20.) Plaintiff alleges Defendant violated the California Labor Code and section 17200 of California’s Business & Professions Code. (Exhibit “A,” ¶¶ 30-117.) Based on these alleged violations, Plaintiff seeks unpaid wages, unpaid meal and rest period premiums, statutory and civil penalties pursuant to the Private Attorneys General Act of 2004 (“PAGA”), as well as restitution and injunctive relief.

4. On September 24, 2013, Plaintiff personally served Defendant with a copy of the Summons, Complaint, Civil Case Cover Sheet, and Notice to Plaintiff. Attached hereto as Exhibit “B” is a true and correct copy of the Summons; attached hereto as Exhibit “C” is a true and correct copy of the Civil Case Cover Sheet; and attached hereto as Exhibit “D” is a true and correct copy of the Notice to Plaintiff.

5. The Notice to Plaintiff set a Case Management Conference for January 8, 2014, in Department 610. (*See* Exhibit “D.”)

6. On September 26, 2013, Plaintiff filed a Proof of Service Summons. Attached hereto as Exhibit “E” is a true and correct copy of the Proof of Service Summons.

7. Defendant filed its Answer to the Complaint on October 24, 2013. Attached hereto as Exhibit “F” is a true and correct copy of Defendant’s Answer.

8. On that same date, October 24, 2013, Defendant filed and served a Notice of Motion to Transfer Venue to Orange County. Attached hereto as Exhibit “G” is a true and correct copy of Defendant’s Notice of Motion to Transfer Venue. In conjunction with that Motion, Defendant also filed and served a Memorandum of Points and Authorities, Declaration of John S. Hong, Declaration of Jennifer Yarbrough, Proposed Order, and Proof of Service. True and correct copies of the Memorandum of Points and Authorities, Declaration of John S. Hong, Declaration of Jennifer Yarbrough, Proposed Order, and Proof of Service are attached hereto as Exhibits “H,” “I,” “J,” “K” and “L,” respectively.

1 9. On November 7, 2013, Plaintiff filed and served a Statement of Non-
2 Opposition to Defendant's Motion to Transfer Venue. A true and correct copy of the
3 Statement of Non-Opposition is attached hereto as Exhibit "M."

4 10. On November 7, 2013, the Parties filed a Stipulation to Transfer Venue
5 to Orange County, which was entered by the Court on November 12, 2013. A true
6 and correct copy of the Stipulation is attached hereto as Exhibit "N," and a true and
7 correct copy of the Court's entry of the Stipulation is attached hereto as Exhibit "O."

8 11. On November 26, 2013, Defendant filed and served Plaintiff with a
9 Notice of Entry of Stipulation to Transfer Venue to Orange County. A true and
10 correct copy of the Notice of Entry is attached hereto as Exhibit "P."

11 12. On December 18, 2013, the Court issued a Transfer Receipt,
12 acknowledging that the matter had been transferred to Orange County Superior Court.
13 A true and correct copy of the Transfer Receipt is attached hereto as Exhibit "Q."

14 13. On December 19, 2013, the Court issued an Order Continuing Case
15 Management Conference, cancelling the Case Management Conference previously set
16 for January 8, 2014, and continuing it to March 5, 2014, in order to follow up on the
17 status of the transfer of the case. A true and correct copy of the Order is attached
18 hereto as Exhibit "R."

19 14. On January 13, 2014, the Orange County Superior Court issued a Notice
20 of Transfer, stating that the file in this case had been received on December 23, 2013,
21 and re-assigning the case for all purposes to the Honorable Robert J. Moss. A true and
22 correct copy of the Notice of Transfer is attached hereto as Exhibit "S."

23 15. On January 17, 2014, the San Francisco County Superior Court received
24 a Transfer Receipt from the Orange County Superior Court, acknowledging receipt of
25 the case and providing a new case number. Attached hereto as Exhibit "T" is a true
26 and correct copy of the Transfer Receipt.

27 16. On January 21, 2014, the Orange County Superior Court issued a Minute
28 Order and Initial Case Management Order designating the case as Complex, which

1 Plaintiff attached to, and served on, Defendant by way of a Notice of Case
2 Management Conference and Case Management Order on February 4, 2014. A true
3 and correct copy of the Notice attaching the Minute Order and Initial Case
4 Management Order is attached hereto as Exhibit "U."

5 17. On February 19, 2014, the San Francisco County Superior Court issued
6 an Order That Hearing Is Off Calendar, taking the previously-scheduled March 5,
7 2014, Case Management Conference off calendar. A true and correct copy of the
8 Order is attached hereto as Exhibit "V."

9 18. On March 27, 2014, Plaintiff filed and served a Notice of Posting Jury
10 Fees. A true and correct copy of the Notice is attached hereto as Exhibit "W."

11 19. On March 28, 2014, Plaintiff filed and served a Case Management
12 Statement, in advance of the upcoming Status Conference set for April 7, 2014. A
13 true and correct copy of the Case Management Statement is attached hereto as Exhibit
14 "X." On April 4, 2014, Plaintiff's counsel provided informal notice that the Court
15 continued the Status Conference to August 4, 2014.

16 20. On July 28, 2014, the Parties filed a Joint Status Conference Statement,
17 in advance of the upcoming Status Conference set for August 4, 2014. A true and
18 correct copy of the Joint Status Conference Statement is attached hereto as Exhibit
19 "Y." On August 1, 2014, Plaintiff's counsel provided informal notice that the clerk
20 had informed Plaintiff's counsel that the Status Conference had been continued to
21 September 29, 2014.

22 21. On September 22, 2014, the Parties filed a Joint Status Conference
23 Statement, in advance of the upcoming Status Conference set for September 29, 2014.
24 A true and correct copy of the Joint Status Conference Statement is attached hereto as
25 Exhibit "Z." On September 26, 2014, Plaintiff's counsel provided informal notice that
26 the Court continued the Status Conference to January 7, 2015.

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1 22. On December 19, 2014, Plaintiff filed a Notice of Class Briefing
2 Schedule. A true and correct copy of the Notice of Class Briefing Schedule is
3 attached hereto as Exhibit "AA."

4 23. On December 30, 2014, the Parties filed a Joint Status Conference
5 Statement, in advance of the upcoming Status Conference set for January 7, 2015. A
6 true and correct copy of the Joint Status Conference Statement is attached hereto as
7 Exhibit "BB."

8 24. On January 6, 2015, Plaintiff filed and served a Notice of Continuance of
9 Status Conference, providing notice that the January 7, 2015 Status Conference was
10 vacated and rescheduled for April 7, 2015. A true and correct copy of the Notice of
11 Continuance is attached hereto as Exhibit "CC."

12 25. On March 30, 2015, the Parties filed a Joint Status Conference Statement,
13 in advance of the upcoming Status Conference set for April 7, 2015. A true and
14 correct copy of the Joint Status Conference Statement is attached hereto as Exhibit
15 "DD." On April 6, 2015, Plaintiff's counsel provided informal notice that the Status
16 Conference was continued to July 7, 2015.

17 26. On May 26, 2015, Plaintiff filed a Joint Stipulation to Continue Class
18 Certification Deadlines. A true and correct copy of the Joint Stipulation is attached
19 hereto as Exhibit "EE." Plaintiff also filed a Proposed Order in conjunction with their
20 Joint Stipulation. A true and correct copy of the Proposed Order is attached hereto as
21 Exhibit "FF." The Court required Plaintiff to re-file the Joint Stipulation to Continue
22 Class Certification Deadlines and Proposed Order, and Plaintiff did so on May 28,
23 2015. A true and correct copy of the May 28, 2015 Joint Stipulation is attached hereto
24 as Exhibit "GG" and a true and correct copy of the May 28, 2015 Proposed Order is
25 attached hereto as Exhibit "HH."

26 27. On or about June 1, 2015, the Court entered an Order Granting the Joint
27 Stipulation to Continue Class Certification Deadlines. A true and correct copy of the
28 Order is attached hereto as Exhibit "II."

1 28. On June 29, 2015, the Parties filed a Joint Status Conference Statement,
2 in advance of the upcoming Status Conference set for July 7, 2015. A true and correct
3 copy of the Joint Status Conference Statement is attached hereto as Exhibit “JJ.”

4 29. On July 8, 2015, Plaintiff filed and served a Notice of Continuance of
5 Status Conference, providing notice that the July 7, 2015, Status Conference was
6 rescheduled for October 13, 2015. A true and correct copy of the Notice of
7 Continuance is attached hereto as Exhibit “KK.”

8 30. On August 12, 2015, the Parties filed a Joint Stipulation to Continue
9 Class Certification Deadlines. A true and correct copy of the Joint Stipulation is
10 attached hereto as Exhibit “LL.” The Parties also filed a Proposed Order in
11 conjunction with their Joint Stipulation. A true and correct copy of the Proposed
12 Order is attached hereto as Exhibit “MM.”

13 31. On or about August 13, 2015, the Court entered an Order granting the
14 Parties’ Joint Stipulation to Continue Class Certification Deadlines. A true and
15 correct copy of the Order is attached hereto as Exhibit “NN.”

16 32. On October 5, 2015, the Parties filed a Joint Status Conference
17 Statement, in advance of the upcoming Status Conference set for October 13, 2015. A
18 true and correct copy of the Joint Status Conference Statement is attached hereto as
19 Exhibit “OO.” The Court posted a tentative ruling continuing the Status Conference
20 to January 5, 2016.

21 33. On or about December 14, 2015, the Orange County Superior Court
22 issued a Notice of Reassignment, re-assigning the case from the Honorable Robert J.
23 Moss to the Honorable William D. Claster. A true and correct copy of the Notice of
24 Reassignment is attached hereto as Exhibit “PP.”

25 34. On December 15, 2015, Defendant filed and served a Notice of
26 Application and Application for Celeste R. Yeager to Appear *Pro Hac Vice*. A true
27 and correct copy of the Notice of Application and Application is attached hereto as
28 Exhibit “QQ.” In conjunction with this Application, Defendant also filed and served a

1 Declaration of Celeste R. Yeager and a Declaration of Maria R. Harrington, true and
2 correct copies of which are attached hereto as Exhibits “RR” and “SS,” respectively.

3 35. On January 6, 2016, Plaintiff filed and served a Notice of Ruling
4 Regarding January 5, 2016, Status Conference. A true and correct copy of the Notice
5 of Ruling is attached hereto as Exhibit “TT.” The Court scheduled a further Status
6 Conference on March 8, 2016.

7 36. On January 29, 2016, the Court issued a Minute Order granting
8 Defendant’s Application for Celeste R. Yeager to Appear *Pro Hac Vice*. A true and
9 correct copy of the Minute Order is attached hereto as Exhibit “UU.”

10 37. On March 1, 2016, the Parties filed a Joint Status Conference Statement,
11 in advance of the upcoming Status Conference set for March 8, 2016. A true and
12 correct copy of the Joint Status Conference Statement is attached hereto as Exhibit
13 “VV.”

14 38. On March 3, 2016, the Court issued a Minute Order rescheduling the
15 March 8, 2016, Status Conference to April 27, 2016. A true and correct copy of the
16 Minute Order is attached hereto as Exhibit “WW.”

17 39. On April 18, 2016, Plaintiff filed a Stipulation and Order for Leave to
18 File a First Amended Complaint (“FAC”). A true and correct copy of the Stipulation
19 and Order is attached hereto as Exhibit “XX.” The Court entered the order the next
20 day and the FAC was deemed filed and served as of April 19, 2016. A true and
21 correct copy of the FAC is attached hereto as Exhibit “YY” and the Order entered by
22 the Court is attached hereto as Exhibit “ZZ.”

23 40. The FAC contains all of the same allegations as the original complaint,
24 but also includes a tenth cause of action for violations of the Fair Labor Standards Act
25 (“FLSA”) (29 U.S.C. section 201, *et seq.*). (Exhibit “YY,” ¶¶ 117-130.)

26 41. On April 22, 2016, the Parties filed a Joint Status Conference Statement,
27 in advance of the upcoming Status Conference set for April 27, 2016. A true and
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1 correct copy of the Joint Status Conference Statement is attached hereto as Exhibit
2 “AAA.”

3 42. On April 26, 2016, the Court issued a Minute Order rescheduling the
4 April 27, 2016, Status Conference to June 20, 2016. A true and correct copy of the
5 Minute Order is attached hereto as Exhibit “BBB.”

6 43. Pursuant to 28 U.S.C. section 1446(a), the attached exhibits constitute all
7 process, pleadings, and orders served upon Defendant or filed or received in this
8 action by Defendant.

9 **TIMELINESS OF REMOVAL**

10 44. As set forth above, the FAC, which contains a new cause of action for
11 violation of the FLSA, was deemed filed on April 19, 2016.

12 45. Pursuant to 28 U.S.C. section 1446(b)(3), “if the case stated by the initial
13 pleading is not removable, a notice of removal may be filed within thirty days after
14 receipt by the defendant, through service or otherwise, of a copy of an amended
15 pleading, motion, order or other paper from which it may first be ascertained that the
16 case is one which is or has become removable.”

17 46. Thus, this Notice of Removal is therefore timely filed as it is filed within
18 thirty (30) days after Defendant was effectively served with the FAC.

19 **FEDERAL QUESTION JURISDICTION PURSUANT TO SECTION 1331**

20 47. Section 1331 provides as follows:

21 The district courts shall have original jurisdiction of all civil
22 actions arising under the Constitution, laws, or treaties of the
23 United States.

24 48. This action is a civil action over which this Court has original jurisdiction
25 based upon the existence of a federal question pursuant to Section 1331, and is one
26 which may be removed to this Court by Defendant pursuant to 28 U.S.C. section
27 1441(b) because it is a civil action that presents a federal question as set forth below.

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1 49. This action arises out of Plaintiff's employment with Defendant. The
2 FAC expressly alleges that "Plaintiff and class members have been entitled to the
3 rights, protections, and benefits provided under the FLSA, codified as 29 U.S.C. §§
4 201, et seq" and that "Defendant violated the FLSA by failing to pay the required
5 minimum wage and by failing to properly calculate and/or pay overtime to Plaintiff
6 and the class as alleged herein." (Exhibit "YY," ¶¶ 117-130.) Plaintiff similarly
7 purports to bring FLSA Claims on behalf of a "class" of other employees. (*Id.*) As
8 such, this Court has original jurisdiction under Section 1331 as "arising under the
9 Constitution, laws, or treaties of the United States."

10 50. Accordingly, this case may be removed to this Court by Defendant
11 pursuant to Section 1331 and 28 U.S.C. section 1441(b) because it is a civil action that
12 arises under the laws of the United States. *See* Section 1331; *Jones v. Giles*, 741 F.2d
13 245, 248 (9th Cir. 1984) (holding that federal courts have federal question jurisdiction
14 over FLSA claims).

15 51. The remaining claims, all related to Plaintiff's or the purported class'
16 employment with Defendant, are based on the same facts, events, transactions and
17 occurrences as Plaintiff's FLSA claim and are so related to Plaintiff's FLSA claim as
18 to form part of the same case and controversy. Therefore, the Court has supplemental
19 jurisdiction over this claim pursuant to 28 U.S.C. section 1367(a). Alternatively, the
20 Court has jurisdiction of the remaining claims pursuant to 28 U.S.C. section 1441(c).
21 *See Wang v. Chinese Daily News, Inc.*, 623 F.3d 743, 761 (9th Cir. 2010), vacated on
22 other grounds, 132 S.Ct. 74 (2011) (finding supplemental jurisdiction over state law
23 claims in a case alleging FLSA and California Labor Code violations). Moreover,
24 Plaintiff's other state law claims are derivative of her FLSA claims since they "derive
25 from a common nucleus of operative fact and are such that a plaintiff would ordinarily
26 be expected to try them in one judicial proceeding." *Kuba v. I-A Agric. Ass'n*, 387
27 F.3d 850, 855 (9th Cir. 2004).

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NOTICE TO STATE COURT AND PLAINTIFF

52. Contemporaneously with the filing of this Notice of Removal in the United States District Court for the Central District of California, written notice of such filing will be given by the undersigned to counsel for Plaintiff, Raul Perez, Melissa Grant, Arnab Banerjee, and Suzy Lee, Capstone Law APC. In addition, a copy of this Notice of Removal will be filed with the Clerk of the Superior Court of the State of California for the County of Orange.

Dated: May 6, 2016

/s/ Maria R. Harrington
ALAYA B. MEYERS
MARIA R. HARRINGTON
LITTLER MENDELSON, P.C.
Attorneys for Defendant
DAVE & BUSTER'S, INC.

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 2050 Main Street, Suite 900, Irvine, California 92614. On May 6, 2016, I served the within document(s):

NOTICE TO FEDERAL COURT OF REMOVAL OF CIVIL ACTION FROM STATE COURT PURSUANT TO 28 U.S.C. SECTIONS 1331, 1441, AND 1446

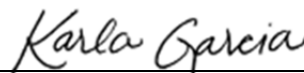
- ☐ by facsimile transmission on that date. This document was transmitted by using a facsimile machine that complies with California Rules of Court Rule 2003(3), telephone number 949.724.1201. The transmission was reported as complete and without error. A copy of the transmission report, properly issued by the transmitting machine, is attached. The names and facsimile numbers of the person(s) served are as set forth below.
- ☒ by placing a true copy of the document(s) listed above for collection and mailing following the firm's ordinary business practice in a sealed envelope with postage thereon fully prepaid for deposit in the United States mail at Irvine, California addressed as set forth below.
- ☐ by depositing a true copy of the same enclosed in a sealed envelope, with delivery fees provided for, in an overnight delivery service pick up box or office designated for overnight delivery, and addressed as set forth below.
- ☐ by directing First Legal Attorney Service to personally deliver a copy of the document(s) listed above to the person(s) at the address(es) set forth below.
- ☒ Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses on the attached service list on the dates and at the times stated thereon. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. The electronic notification address of the person making the service is kgarcia@littler.com.

1 Raul Perez, Esq.
2 Melissa Grant, Esq.
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14 Attorneys for Plaintiff Cherish Nunnally

15 I am readily familiar with the firm's practice of collection and processing
16 correspondence for mailing and for shipping via overnight delivery service. Under
17 that practice it would be deposited with the U.S. Postal Service or if an overnight
18 delivery service shipment, deposited in an overnight delivery service pick-up box or
19 office on the same day with postage or fees thereon fully prepaid in the ordinary
20 course of business.

21 I declare under penalty of perjury under the laws of the State of
22 California that the above is true and correct. Executed on May 6, 2016, at Irvine,
23 California.

24 

25 Karla Garcia

26 Firmwide:140251639.2 079195.1009